

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KENNETH AGUILAR,

Petitioner,

v.

No. 17-cv-1264 JCH/SMV

**VICTOR RODRIGUEZ,
ROBERT B. CORIZ, and KEWA PUEBLO,**

Respondents.¹

**ORDER GRANTING PETITIONER'S MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL**

THIS MATTER is before the Court on the Motion for Leave to Proceed on Appeal *in Forma Pauperis* [Doc. 21] filed by Petitioner Kenneth Aguilar on October 16, 2018. The Court finds that Petitioner has shown an inability to pay or to give security for fees and costs and that Petitioner raises issues on appeal that are fairly debatable. The Court will grant the Motion.

Rule 24 of the Federal Rules of Appellate Procedure states, in pertinent part:

[A] party to a district-court action who desires to appeal *in forma pauperis* must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1). Petitioner Aguilar's Motion complies with the Rule 24(a) requirements for leave to proceed *in forma pauperis*.

¹ Kewa Pueblo has been dismissed from this action. [Doc. 5].

In determining whether to permit a party to proceed *in forma pauperis* on appeal, the Court must decide two questions: (1) whether the appeal is taken in good faith; and (2) whether the appellant has shown a financial inability to pay or give security for fees and costs. *See Fed. R. App. P. 24(a)(1)(A)*. The burden is on the party seeking *in forma pauperis* status to show that he is raising reasoned and nonfrivolous issues on appeal and that he lacks the financial resources to pay or give security for the fees and costs of appeal. *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991).

With respect to the first question, under Rule 24(a), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. *Fed. R. App. P. 24(a)(3)(A)*. For purposes of Rule 24(a), a good faith appeal is one that presents a “reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardeleben*, 937 F.2d at 505; *see Coppedge v. United States*, 369 U.S. 438, 445, 447 (1962). The Court concludes that Petitioner Aguilar raises reasoned, nonfrivolous arguments in support of the issues on appeal.

The second question the Court must address in deciding whether to grant an application to proceed *in forma pauperis* is the whether the appellant has shown the financial inability to pay or give security for fees or costs on appeal. An appellant’s motion must include an affidavit showing that the appellant is unable to pay the costs of the appeal. *Fed. R. App. P. 24(a)(1)*. Petitioner Aguilar’s Motion includes a statement made under penalty of perjury that he is unable to pay the docket fees for the appeal or post a bond for them. [Doc. 21-1] at 1. Petitioner Aguilar’s financial declaration also shows that the only income available to his family is his wife’s income, and the

family's expenses exceed her income. [Doc. 21-1]. Petitioner has shown that he is unable to pay the costs on appeal or post security for those costs. *See* Fed. R. Civ. P. 24(a).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Petitioner Aguilar's Motion for Leave to Proceed on Appeal *in Forma Pauperis* [Doc. 21] is **GRANTED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge